Remarks

The Office Action dated May 7, 2004 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-48 are pending in this application. Claims 1-48 stand rejected.

The rejection of Claims 1, 2, 9-11, 17-18, 25-27, 33, 34, and 41-43 under 35 U.S.C. § 102(e) as being anticipated by Mowery et al. (U.S. 5,983,198) is respectfully traversed.

Mowery et al. describe an inventory control method that monitors product level in customer storage tanks and a delivery scheduling method that utilizes the monitored tank level data. The timing of the delivery is determined by the forecasted usage of material in the tank; the available capacities of neighboring tanks; that a delivery can be made whenever the tank level is in the "delivery zone" (i.e., the amount of material is between the minimum inventory level and the maximum order level, see Figure 4); that a delivery will be made before the tank level reaches the minimum inventory level. Also, the amount of delivery is determined by the available tank capacity; minimum delivery amount for the tank; the maximum delivery amount for the tank; and the available capacities of neighboring tanks (see Col. 9, lines 14-24).

Claim 1 of the present application recites a method of tracking and predicting the capacity utilization of a goods delivery system, "the system having at least one delivery agent and at least one delivery zone comprising a geographic area comprising a zip group having at least one zip code, each delivery agent having at least one delivery vehicle comprising at least one delivery slot, each delivery slot defined as a portion of the at least one delivery vehicle used to deliver a good, each delivery zone having a delivery agent capacity utilization matrix comprising a plurality of delivery slots, the plurality of delivery slots defining a delivery capacity

of the delivery agent, the goods delivery system providing a respective first potential delivery date, a respective order, and the number of delivery slots the respective order will fill, said method of tracking capacity utilization comprising the steps of: getting a respective zone maximum delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone . . . updating the respective delivery agent capacity utilization matrix for the above specified period after the respective order has been included within said respective number of used delivery slots".

Applicant respectfully submits that the Section 102 rejection of the presently pending claims is not a proper rejection. The Federal Circuit has opined that to anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F2.d 137, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986). Also, missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. See *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

Particularly, Mowery et al. do not describe nor suggest a method of tracking and predicting the capacity utilization of a goods delivery system as recited in Claim 1. Specifically, Mowery et al. do not describe nor suggest a method that includes the steps of determining a respective zone maximum number of delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone and updating the respective delivery agent capacity utilization matrix for the above specified period after the respective order has been included within said respective number of used delivery slots. Rather, Mowery et al. describe an inventory control method that monitors product level in customer

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storage tanks and a delivery scheduling method that utilizes the monitored tank level data.
Mowery et al. do not describe nor suggest a delivery agent capacity utilization matrix that
includes a plurality of delivery slots where each delivery slot is defined as a portion of a delivery
vehicle used to deliver a good, and with the plurality of delivery slots defining a delivery
capacity of the delivery agent. Rather, Mowery et al. describe an algorithm that calculates the
tank material usage and an associated amount needed to keep the amount of material in the tank
below a minimum inventory level L_1.

The Office Action at pate 6, suggests that Mowery et al. teach a delivery zone that
includes customers with storage tanks with each tank having a maximum so that the zone has a
total maximum for delivery and that the "availability of each customer's tank is measured by
delivery slots". Applicant respectfully submits that the term "delivery slot" is not used by
Mowery et al. anywhere in U.S. Patent No. 5,983,198. And further, if, *arguendo*, Mowery et al.
did intend to use the term "delivery slot" to mean the "availability of each customer's tank is
measured by delivery slots", Mowery et al. do not describe nor suggest a delivery slot that is
defined as a portion of a delivery vehicle used to deliver a good. Also, at page 7 of the present
application, Applicant describes that delivery slots represent the delivery agent's delivery
capacity and that the maximum number of delivery slots for each delivery day is defined as the
total number of slots the delivery agent's vehicles can deliver in the zone and is called the zone
maximum. Mowery et al. is silent as to the number of delivery slots that are present in a delivery
agent's trucks. The system of Mowery et al. is only based on the capacity of the tanks were the
product is to be delivered, the historical usage of each tank, and the minimum level allowable in
each tank to sustain production at the plant.

Also, the Office Action, at page 7, suggests that "each customer's delivery availability is determined by the tank maximum (L_3) minus the number of used slots (L_2)." Applicant respectfully submits that this is incorrect. Mowery et al. describe at Col. 9, lines 20-25 that the amount of the delivery is determined by the available capacity of the tank (capacity L_3 minus ending inventory L_2). Applicant submits that the tank ending inventory (L_2) is <u>not</u> the same as the number of used slots in the delivery agent's vehicles. In the present application and as explained above, the maximum number of delivery slots for each delivery day is defined as the total number of slots that the delivery agent's vehicles can deliver in the zone and is called the zone maximum. Mowery et al. do not describe nor suggest such a feature.

Further, the Office Action suggests that Mowey et al. teaches "updating the respective capacity utilization matrix for the above specified period after the respective order has been included within said respective number of used slots (See figure 5, column 4, lines 12-45 and 56-61, column 5, lines 30-40, column 7, lines 15-33, and column 9, lines 1-13, wherein the central system is updated to reflect the delivery of the goods and the respective number of slots (levels) of capacity delivered and utilized in a period)". Applicant respectfully disagrees with this suggestion because Mowery et al. do not describe nor suggest a delivery agent capacity utilization matrix that includes a plurality of delivery slots with the plurality of delivery slots defining a delivery capacity of the delivery agent with each a delivery slot defined as a portion of a delivery vehicle used to deliver a good. Mowery et al. only teach the maximum capacity of the tanks to receive delivery. Mowery et al. do not describe nor suggest a delivery capacity of the delivery agent. For example, Mowery et al. do not take into account in their system the situation of when the delivery agent has the capacity to deliver two times the amount that the plurality of

tanks in the delivery agent's delivery zone can receive. The delivery schedule of Mowey et al. is based on the capacity of the tanks to receive product, not on the capacity of the delivery agent to deliver product.

For the reasons set forth above, Applicant submits that Claim 1 is patentable over Mowery et al.

Claims 2, and 9-11 depend from independent Claim 1. When the recitations of dependent Claims 2, and 9-11 are considered in combination with the recitations of Claim 1, Applicant respectfully submits that Claims 2, and 9-11 likewise are patentable over Mowery et al.

Mowery et al. do not describe nor suggest a computer process as recited in Claim 17 of the present application. Particularly, and at least for the reasons explained above, Mowery et al. do not describe nor suggest a method that includes the steps of getting a respective zone maximum delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone and updating the respective delivery agent capacity utilization matrix for the above specified period after the respective order has been included within said respective number of used delivery slots. Accordingly, Applicant submits that Claim 17 is patentable over Mowery et al.

Claims 18, and 25-27 depend from independent Claim 17. When the recitations of dependent Claims 18, and 25-27 are considered in combination with the recitations of Claim 17, Applicant respectfully submits that Claims 18, and 25-27 likewise are patentable over Mowery et al.

Mowery et al. do not describe nor suggest a method as recited in Claim 33. Particularly, and for the reasons explained above, Mowery et al. do not describe nor suggest a method that

includes the steps of getting a respective zone maximum delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone and updating the respective delivery agent capacity utilization matrix for the above specified period after the respective order has been included within said respective number of used delivery slots. Accordingly, Applicant submits that Claim 33 is patentable over Mowery et al.

Claims 34 and 41-43 depend from independent Claim 33. When the recitations of dependent Claims 34 and 41-43 are considered in combination with the recitations of Claim 33, Applicant respectfully submits that Claims 34 and 41-43 likewise are patentable over Mowery et al.

For the reasons set forth above, Applicant respectfully requests that the Section 102(e) rejection of Claims 1, 2, 9-11, 17-18, 25-27, 33, 34, and 41-43 be withdrawn.

The rejection of Claims 3-8, 12-16, 19-24, 28-32, 35-40, and 44-48 under 35 U.S.C. § 103(a) as being unpatentable over Mowery et al. is respectfully traversed.

As explained above, independent Claims 1, 17, and 33 are patentable over Mowery et al.

Claims 3-8 and 12-16 depend from independent Claim 1, Claims 19-24 and 28-32 depend from independent Claim 17, and Claims 35-40 and 44-48 depend from independent Claim 33. When the recitations of dependent Claims 3-8 and 12-16, dependent Claims 19-24 and 28-32, and dependent Claims 35-40 and 44-48 are considered in combination with the recitations of Claims 1, 17, and 33 respectively, Applicant respectfully submits that Claims 3-8, 12-16, 19-24, 35-40, and 44-48 likewise are patentable over Mowery et al.

For the reasons set forth above, Applicant respectfully requests that the Section 103(a) rejection of Claims 3-8, 12-16, 19-24, 28-32, 35-40, and 44-48 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully submitted,

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